UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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*Ex parte* CONRAD OLIVER GARDNER

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Appeal No. 2006-3173
Application No. 08/896,514
Technology Center 3600

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Before OWENS, BAHR and HORNER, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON REQUEST FOR REHEARING

This is a decision on appellant's request for rehearing (filed October 31, 2006) under 37 CFR § 41.52(a)(1) of our decision mailed October 20, 2006 affirming the examiner's rejection of claims 55 and 59 under 35 U.S.C. § 103(a) as being unpatentable over Lynch in view of known fast charge-discharge batteries discussed by appellant on page 7 of the present specification (AAPA). In our decision, we sustained the examiner's determination that it would have been obvious to use known fast charge-discharge batteries in Lynch's hybrid vehicle as

storage batteries 14 to achieve the short duration, high current discharge and low internal resistance objective of Lynch (decision, pp. 6-7).

Appellant appears to argue that this panel overlooked or misapprehended Lynch's teaching that "the system can be adjusted so that the batteries are fully charged at the beginning of a mission and discharged at the end" (col. 9, ll. 45-48). Request, p. 2. Appellant refers to such adjustment as "load leveling" and urges that "[s]ubstituting a fast charge-discharge battery would render load leveling unnecessary." Request, p. 2.

Appellant's argument takes the quoted portion of Lynch out of context. In fact, Lynch teaches, at column 9, ll. 38-49, that:

> It will be recognized that the system described is inherently capable of supplying over a long period of time just enough energy to [accommodate] the energy requirements of a particular mission.
>
> Further, the components and their operating points may be selected to operate such that different missions can be accommodated and different ratios of electrical to chemical energies can be used. For example, the system can be adjusted so that the batteries are fully charged at the beginning of a mission and discharged at the end. This would cause the vehicle to use less chemical fuel but would necessitate a battery charging period.

Moreover, the quoted text from column 9 of Lynch must be read in conjunction with the teachings in the paragraph bridging columns 4 and 5 of Lynch. Specifically, Lynch teaches that

> as much energy should be supplied to the batteries during periods of low load as is drawn from the battery in periods of high load, when averaged over the duration of a typical mission. Thus, ideally, batteries will not have to be recharged between missions, nor will fuel be consumed to produce more electrical energy than can be stored for latter use.

When read as a whole, it is quite apparent that Lynch contemplates the batteries will *not* have to be recharged between missions. Lynch does not present the system adjustment discussed in column 9 and referred to by appellant as "load leveling" as the ideal or typical situation but, rather, as an example of an adjustment that could be made to conserve chemical fuel if battery charging between missions can be tolerated. Lynch's teaching that such a fuel conserving system adjustment is possible would not have dissuaded the skilled artisan from using fast charge-discharge batteries in the Lynch hybrid vehicle. The motivation for using fast charge-discharge batteries is discussed on pages 7 and 8 of our decision.

Appellant's bald assertions (request, p. 2) that the present invention solves a long-felt and unsolved need and has resulted in commercial success of present day hybrids utilizing fast charge-discharge batteries are unsubstantiated.[1] Moreover, the allegation of commercial success was not raised in appellant's brief and reply brief and thus is not permitted in a request for rehearing. *See* 37 CFR § 41.52(a)(1).

[1] Our decision addresses on page 13 the shortcomings of appellant's allegations of long-felt and unsolved need.

In light of the above discussion, the arguments in appellant's request do not persuade us of any error in our decision. The appellant's request for rehearing has been granted to the extent that we have reconsidered our decision but is denied with respect to making any modification thereto.

DENIED

TERRY J. OWENS
Administrative Patent Judge

JENNIFER D. BAHR
Administrative Patent Judge

LINDA E. HORNER
Administrative Patent Judge

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